IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT
THE HON'BLE MR JUSTICE B.PRAKASH RAO
WRIT PETITION NO : 2036 of 2001

Between:
1 Siddeshuni Ravi Kumar, S/o late Samba Siddaiah,
R/o H.no.6-3-157, Brahmanawada, Hanamkonda, Warangal Dist.
2 Siddeshuni madhu Kumar, S/o late Samba Siddaiah,
H.no.6-3-157, Brahmanawada,Hanamakonda,Warangal Dist.
3 Siddeshuni Suresh Kumar, S/o late Samba Siddaiah,
H.no.6-3-157, Brahmanawada,Hanamakonda,Warangal Dist.
4 Siddeshuni maruthamma, W/o late Samba Siddaiah,
H.no.6-3-157, Brahmanawada,Hanamakonda,Warangal Dist.
5 Vastrala Anitha, D/o late Samba Siddaiah,
H.no.6-3-157, Brahmanawada,Hanamakonda,Warangal Dist.

..... PETITIONER(S)

AND

1 The Govt. of A.P., rep. by its Principal Secretary of Endowments Dept., A.P.,
Hyderabad.
2 The Commissioner, Endowments Dept., A.P., Hyderabad.
3 The Dy.Commissioner, Endowments Dept., A.P., Hyderabad.
4 The Asst.Commissioner, Endowments, Warangal Dist.
5 The Executive Authority, Sri Siddeawara Swamy Temple, Hanamkonda
Town, Warangal Dist.
6 The mandal Revenue officer, Hanamkonda, Warangal Dist.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate writ, order or direction preferably in the nature of writ of mandamus declaring action of the respondents to alienate the land to the 3rd parties in public auction as illegal, arbitrary and violative of article 300A of the constitution of India and petitioners rights under A.P. (Telangana Area) Inams Abolition Act 1955 and consequently direct the respondents not to evict the petitioners from the lands situated at Hanmakonda Revenue Village in Sy.Nos.882, 883, 884, 885, 887, 888, 889 & 922.

Counsel for the Petitioner: MR.P.MEHAR SRINIVASA RAO

Counsel for the Respondent Nos. 1 to 4 and 6: GP FOR ENDOWMENTS

Counsel for the Respondent No.5:MR.K.RAVI

The Court made the following :

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ORDER

Heard Sri P.Meher Srinivas Rao, learned counsel for the petitioners, Sri K.Ravi, learned counsel appearing on behalf of the fifth respondent and the learned Government Pleader for Endowments for other respondents.

The petitioners herein, claiming to be the poojaris o f Siddheshwara Temple, Hanamkonda, Warangal district, filed this Writ Petition, *inter alia,* seeking for a Writ of Mandamus to declare action of the respondents herein to alienate the land to third parties in public auction as illegal, arbitrary and violative of Article 300(A) of the Constitution of India and in the teeth of rights as conferred in their favour as per the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, and for further direction not to evict them from the lands.

The case of the petitioners is that the lands in survey nos. 882, 883, 884, 885, 887, 888, 889 and 922 situated in Hanumakonda revenue village, Warangal district, were granted to the ancestors of the petitioners as personal inam in the service of worship and other services, in the Siddheshwara Temple, Hanamkonda, and they have been working as poojaris all along regularly and they, being

cultivators and in occupation of the lands, are entitled to rights of Kabize-e-Kadim within the meaning of provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short, 'the Act') and therefore, they are entitled to registered documents under Section 5 of the Act. Further, it is also their case that on the earlier occasion, in pursuance of the provisions of the Andhra Pradesh (Telangana Area) Inam Abolition Act, 1967, rythwari patta was granted on 01.04.1970 by the Tahsildar, Warangal in favour of their predecessors-in-title. However, the said Act was subsequently struck down by this Court. Therefore, the provisions of the Act, 1955 prevail. Yet, the petitioners continued to be Kabize-e-Kadim and occupants of the said lands and therefore, they are sufficiently well protected. In the mean while, the Government initiated proceedings for selling all the said lands under Section 80(1) (c) of the Andhra Pradesh Charitable & Hindu Religious Institutions and Endowments Act, 1987, after giving permission, and accordingly orders were issued in G.O. Ms. No.657, dated 24.08.1999 in favour of the petitioners and they have made part deposits. However, subsequently, the same was sought to be withdrawn and the petitioner filed Writ Petition No. 773 of 2000 for implementation of the G.O. No. 657, dated 24.08.1999. The said Writ Petition was allowed initially and subsequently, it was reopened at the instance of one of the parties, at which stage it was submitted on behalf of the Government that said Orders in G.O. No. 657 were already cancelled by issuing G.O. Ms. No.771. Therefore,

the said Writ Petition was dismissed as *infructuous*. The petitioners submit that they are ready to purchase the property in spite of the fact that they are entitled to be declared as occupants as Kabize-e-Kadim under the provisions of the Act, 1955. In the mean while, certain proceedings were initiated in this regard. However, the respondents have taken the course to conduct public auction for disposal of the said lands, which is quite contrary to the rights vested with the petitioners. Hence, the Writ Petition.

In the counter affidavit filed on behalf of the respondents, the main objection raised is to the effect that the lands in question are not granted to the petitioners, but they belong to the temple. However, the petitioners' family was permitted to cultivate the same subject to performance of service and therefore, they can not make any claim as such and the said lands being inam burdened with service, grant is to the temple but not to the persons. No doubt, the petitioners are cultivating the lands being poojaris of the temple. However, they are not entitled to be declared as Kabize-e-Kadim occupants nor any rights can be conferred on them. Earlier attempt made by the petitioners' father for sale the said lands by approaching the department, was already withdrawn. Hence, the petitioners can not make any claim. The earlier Writ Petition filed by the petitioners was also dismissed. Even though the Government sought to sell the same to the petitioners and the petitioners making part-

payment of
Rs. 7,81,820/-, the same was rejected after cancellation of the earlier orders. It is also pointed out that the temple is registered in the book of Endowments as long back as on 17.11.1955 showing the lands as belonging to the temple. Therefore, the petitioners can not make any claim as such either for occupancy rights or purchase the property.

Having heard the learned counsel on either side and on perusal of the material as pointed out by them, the question which has to be considered is as to whether the petitioners' claim for purchase of the lands in question, is sustainable in law ?

There is no dispute to the fact that the petitioners are poojaris and doing service in the aforesaid temple and they are also in occupation of the said lands by cultivating the same. The case of the petitioners is that the said lands were granted to them and the case of the respondents is that the lands belong to the temple. The petitioners' claim that they are the occupants of the lands in the capacity of Kabize-e-Kadim as provided for under the Act, 1955 and therefore, their rights are well protected. In case the grant is to the temple, question of applying the provisions of the Act, 1955 does not arise nor any occupancy rights can be recognised as the same is sought to be excluded. In spite of repeated persuasions, the petitioners are not able to show that there was any grant as such either in their favour or in favour of any of their ancestors. Admittedly, now as evident

from the counter affidavit that the temple with all its properties including the lands, was registered as long back as in the year 1955. Unless and until the grant is to them, the petitioners can not make any claim for any occupancy rights nor the provisions of the Act, would apply. The grant, apparently, is in favour of the temple and the petitioners are burdened with service of performing pooja. The petitioners are doing service. However, they can in no circumstances, claim any occupancy rights. Having thus failed to establish either way especially the grant and their entitlement for any occupancy rights under the Law, the petitioners have no right, much less any locus, to make any claim. Even their request for purchase by themselves also can not straight away be accepted. But, at one stage, it is stated on behalf of the respondents that there was an offer of almost Rs.1,80,000/- per acre and in the event of the lands being sold, the petitioners would be provided with the fixed salary. However, nothing is disclosed as to the quantum. Even by taking into account normal salaries as fixed by the respondents, it can in no circumstance, be said to be in consonance to the income or usufruct which the petitioners normally derive from out of the lands. Certainly, there is a greater variance in regard to the amounts as shown when they want to sell and in regard to the amounts what they want to fix as salaries. It is also now well established that if at all any sale is to be held, necessarily the same has to be conducted in public auction and the petitioners can well participate therein. However, it can not be forgotten that

having deprived of the property especially where they continue to do service with the temple, they can not be denied of their reasonable sustenance which normally they obtain from the very same lands. The quantum can not be based upon the yields or figures as sought to be applied. The right to perform service can not be denied in any manner without providing for new compensation thereof. Therefore, there has to be a direct equi-nexus between the lands deprived and the yield therefrom vis-à-vis that of the quantum of salaries to be fixed in favour of the petitioners for doing the service. Subject to the above, I do not find any merits in the above Writ Petition.

The Writ Petition is, accordingly, dismissed. No costs.

(B.Prakash Rao, J.)

21.02.2005
DRK

To
1 The Principal Secretary of Endowments Dept., Govt. of A.P. Hyderabad.
2 The Commissioner, Endowments Dept., A.P., Hyderabad.
3 The Dy.Commissioner, Endowments Dept., A.P., Hyderabad.
4 The Asst.Commissioner, Endowments, Warangal Dist.
5 The Executive Authority, Sri Siddeawara Swamy Temple, Hanamkonda
Town, Warangal Dist.
6 The mandal Revenue officer, Hanamkonda, Warangal Dist.
7. 2 C.Cs to G.P. for Endowments, High Court buildings, Hyderabad (OUT)
8. 2 C.D.copies.